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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8 United States of America,
9 Plaintiff,
10 v.
11 Aaron Thomas Mitchell,
12 Defendant.
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CR 22-01545-TUC-RM(EJM)
ORDER

14 On January 31, 2024, the government filed a Response to Defendant's Motion to
15 Dismiss Count Three of the Superseding Indictment. (Doc. 134.) That Response will be
16 ordered stricken from the record because a Motion to Dismiss Count Three is not currently
17 pending before the Court.

18 The defendant filed a Motion for a Bill of Particulars regarding Count Three of the
19 Superseding Indictment. (Doc. 105.) In the defendant's Reply to the government's
20 Response, the defendant added the argument that the Court should dismiss Count Three
21 because it failed to allege an offense. (Doc. 131.) In a Report and Recommendation
22 dated January 31, 2024, this Court recommended that the District Court deny the Motion
23 for a Bill of Particulars. (Doc. 133.) The Court noted that even if Count Three failed to
24 allege an offense, that argument was not relevant to the Motion for a Bill of Particulars,
25 which was the only relief sought in that motion. (Doc. 133 at 4, n. 1.) A Motion to
26 Dismiss Count Three cannot be made in a Reply brief when the defendant's original motion
27 did not seek that relief. Because a Motion to Dismiss Count Three has not been properly
28 filed, there is no such motion pending before the Court which requires a government

1 response. The defendant is certainly free to file a proper Motion to Dismiss Count Three.

2 Accordingly, it is ORDERED that the government's Response to Defendant's
3 Motion to Dismiss Count Three of the Superseding Indictment (Doc. 134) is stricken from
4 the record because a Motion to Dismiss Count Three is not pending before the Court.

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7 Dated this 1st day of February, 2024.

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10 Eric J. Markovich
11 United States Magistrate Judge
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